

**IN THE DRAWINGS**

Applicants acknowledge that the Examiner has accepted the drawings filed on September 18, 2000.

## **REMARKS**

Applicants reaffirm the election to prosecute the Group II method claims, *i.e.*, claims 4-31, as indicated in the telephone interview with the Examiner on April 13, 2004. Thus, claims 4-31 remain pending in the present application. Claims 4, 5, 7, 12, 13, 15, 19, 20, and 26 have been amended.

The Examiner has noted that the oath or declaration is defective. The Applicants are in the process of having the named inventor cure any defect in the declaration. The revised declaration will be submitted to the Examiner as soon as it is available to the undersigned attorney.

Claims 1-3 have been withdrawn in response to the restriction requirement. Applicants reserve the right to file one or more divisional applications to further pursue protection of the invention set forth in the present application.

Claims 4, 5, 7, 12, 13, 15, 19, and 20, have been amended to correct the informalities raised by the Examiner. These amendments are not presented to distinguish the claim over the prior art.

The Examiner rejected claims 26 and 30 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. These claims have been amended to address the issues raised.

The Examiner rejected claims 13, 20, 26, and 30, under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject

matter which Applicant regards as the invention. The claims have been amended to clarify the claimed subject matter. The Examiner argues that these claims recite subject matter that is not disclosed in (or is inconsistent with) the specification. The Examiner, for example, asserts that claim 30 refers to “toll charged,” whereas the specification refers to “account information for toll booths.” The Applicants disagree with the Examiner, and assert that the claims are fully supported by, and consistent with, the specification, particularly in view of the well-established principle that the language of the claims themselves can serve as an adequate basis of the written support. For example, with respect to claim 30, the specification describes that the vehicle communication may include “account information for toll booths.” One type of information for toll booths may be the toll that is charged, which is specifically recited in the originally-presented claim 30. Thus, in view of the original disclosure, claim 30 is fully supported. The other claims are similarly supported. Nevertheless, the claims have been amended to more broadly claim the subject matter in a manner that is consistent with the specification. As such, the Applicants traverse the Examiner’s objection.

The Examiner rejected claim 4, under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 5,737,703 (*Byrne*). Claim 4 is patentable over *Byrne* and the other cited references. Claim 4 specifies that the first-tier base station determines one or more discrete number frequency channels that may be utilized by the combination unit to communicate with the wireless device. Neither *Byrne* nor any of the other cited references teaches this claimed feature. *Mahany* teaches that each base station may use a different frequency hopping sequence, but does not teach the recited claim feature. Accordingly, for this reason, claim 4 and its dependent claims are allowable.

The Examiner rejected claims 7, 11, and 15, under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 5,696,903 (*Mahany*). Claim 7 calls for transmitting via a first communications protocol using a wireless medium, wherein the first communications protocol utilizes frequency hopping to transmit a message over a discrete number of frequency channels within a frequency band; transmitting via a second communications protocol to communicate using a wireless medium, wherein the second communications protocol utilizes frequency hopping to transmit a message over a discrete number of frequency channels within the frequency band, wherein the second communications protocol operates at a lower power level than the first communications protocol; prior to the transmitting via the second communications protocol, coordinating with a transmitting device transmitting via the first communication protocol to determine one or more discrete number of frequency channels that will not be used by the first communications protocol and transmitting via the second communications protocol using the one or more discrete number of frequency channels that are not used by the first communications protocol.

Claim 7 is generally directed to coordinating the use of frequency channels between a first communications protocol and a second communications protocol for the purposes of communicating. Claim 7 specifies that the first communications protocol utilizes frequency hopping to transmit a message over a discrete number of frequency channels within a frequency band, and that the second communications protocol uses one or more frequency channels within this band that are not used by the first communications protocol.

The Examiner argues that the text in *Mahany* at col. 4, line 55 – col. 5, line 3 supposedly teaches all of these claimed features. The Applicants respectfully disagree. The cited text merely describes that neighboring base stations can exchange communication parameters, such as the frequency hopping sequence that is used by a particular base station. These communications parameters can then be relayed to peripheral devices that are under the control of a given base station. As an initial matter, the text relied upon by the Examiner states nothing about the base stations employing a first and a second communications protocol. Moreover, the cited text does not specify that the second communications protocol operates at a lower power level than the first communications protocol. Additionally, even if the cited text were to refer to the use of two different communications protocols, it does not disclose or even suggest that the second communications protocol uses one or more discrete number of frequency channels within the frequency band that is also employed by the first communications channel. And, more notably, the cited text does not disclose or even suggest that, prior to transmitting via the second communications protocol, there is any coordination with the transmitting device that transmits via the first communication protocol. In fact, *Mahany* teaches the opposite --exchanging transmissions parameters so that a roaming peripheral device can communicate with a neighboring base station using the frequency hopping sequence of the neighboring base station. See col. 4, lines 55-58. In contrast, one or more embodiments of the claimed invention are directed to coordinating communication using different communications protocols with different devices (e.g., access point 1507 and RadPad devices 1510-1513) to avoid interference. Accordingly, for at least this reason, claim 7 and the claims depending from it, is allowable.

With respect to claim 15, the Examiner argues that the first-tier base station corresponds to element 56 of Figure 1C, and that the second-tier base station corresponds to element 57 of Figure 1C. Claim 15 specifies that the first-tier base station operates in accordance with a first communications protocol, and that the second-tier base station operates in accordance with a different, second communications protocol. Two protocols may be different in a variety of ways, including where one is a subset of another, where at least one feature is supported by one but not the other, and the like. Moreover, the protocols may be different if the physical-layer protocols employed by the first-tier and second-tier base stations are different, even though the higher-level protocols, such as the transport level and/or link layer protocols, are the same.

*Mahany* at least does not teach that element 56 (which according to the Examiner corresponds to the first-tier base station) and element 57 (which according to the Examiner corresponds to the second-tier base station) employ different communications protocol. Rather, Figure 1C illustrates that both elements 56 and 57 employ the same communications protocol. Claim 15 further specifies that the second communications protocol operates at a lower power level than the first communications protocol. In contrast, *Mahany* does not teach that element 57 employs a communications protocol that operates at a lower power level. Accordingly, for at least these reasons, claim 15, and its dependent claims, is allowable.

Additionally, claim 15 calls for the first-tier base station and the second-tier base station to coordinate to determine the one or more discrete number of frequency channels that will not be used by the first communications protocol. *Mahany* does not teach that the first-tier base station and the second-tier base station coordinate to determine the one or more discrete number of

frequency channels that will not be used by the first communications protocol. Rather, *Mahany* teaches using a different frequency hopping sequence. Additionally, *Mahany* also does not teach or suggest directing the second-tier base station to use the one or more discrete number of frequency channels that are not used by the first-tier base station. For these other reasons, claim 15 and its dependent claims are allowable.

Claims 10, 12, 13, 18, 19, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Mahany*. Additionally, claim 6 is rejected under 35 U.S.C. 103(a) over *Byrne*. Even though the Examiner purports to reject these claims under 103(a), the Office cites no secondary reference in support of this rejection. Because the Office **cites no references** to support this “obviousness” assertion, the Applicants infer that the Examiner makes this assertion based on **personal knowledge**. However, no **supporting affidavit** has been made of record. The Applicants respectfully request that prior art be provided to substantiate this “obviousness” assertion or that an **affidavit** be filed in accordance with 37 C.F.R. § 1.104(d)(2), which states (emphasis added):

- (2) When a rejection in an application is based on facts **within the personal knowledge** of an employee of the Office, the data shall be as specific as possible, and the reference **must be supported, when called for by the applicant, by the affidavit of such employee**, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Consequently, the Applicants respectfully and seasonably request the Office to either (1) **cite a reference** in support of this position, or (2) **provide a Rule 104(d)(2) affidavit** from the Examiner supporting any **facts within the personal knowledge of the Examiner**, as also set forth in M.P.E.P. § 2144.03.

Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, these arguments are moot and therefore not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter are not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization.

For the foregoing reasons, reconsideration of the present application is respectfully requested.

In light of the arguments presented above, Applicants respectfully assert that the pending claims are allowable. Accordingly, a Notice of Allowance is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Houston, Texas telephone number (713) 934-4060 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON, P.C.  
CUSTOMER NO. 23720

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By: Ruben Bains *With Permission* *John* *JASON J OHN*  
Ruben S. Bains, Reg. No. 31,892  
10333 Richmond, Suite 1100  
Houston, Texas 77042  
(713) 934-7000  
(713) 934-7011 (facsimile)  
ATTORNEY FOR APPLICANT(S)